UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/407,124	09/27/1999	WILLIAM D. KENNEDY	102045	2321

7590 02/02/2005

NOBLITT & GILMORE, LLC
4800 NORTH SCOTTSDALE ROAD
SUITE 4800
SCOTTSDALE, AZ 85251

EXAMINER	
ALVAREZ, RAQUEL	

ART UNIT	PAPER NUMBER
3622	

DATE MAILED: 02/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/407,124	KENNEDY, WILLIAM D.	
	Examiner	Art Unit	
	Raquel Alvarez	3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *29 October 2004*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-21* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-21* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This office action is in response to communication filed on 10/29/2004.

2. Claims 1-21 are presented for examination.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wong et al. (5,890,175 hereinafter Wong) in view of Bezos et al. (6,029,141 hereinafter Bezos).

Wong substantially teaches an electronic commerce system at least comprising a host in communication with a plurality of distributors (col. 3, lines 35-50)., the host having a capability to sort discrete items from the distributors (col. 4, lines 5-15), and a store builder (col. 3, line 60 - col. 4, line 10) including border design and store name (fig. 2,merchant store information; product mix commensurate with a specialty store (fig. 3, specialty products, fig. 4.), store builder maintains a consumer accessible website separate from the store (fig. 1 1) and electronic link to the store (col. 6, line 60 - col. 7, line 5). Wong also substantially teaches the method at least comprising having a store owner electronically accessing a host, select a store type, setting up an account, customizing the appearance, customizing a product mix (see at least figs. 2-5, 7-8, col. 3, lines 20-40, col. 4, lines 1-67) including border design and store name (fig. 2,

merchant store information; product mix commensurate with a specialty store (fig. 3, specialty products, fig. 4).

Bezos teaches devising a commission schedule (see at least col. 2, lines 1-20, co1. 7, lines 35-40) and stores providing a consumer with access to items assigned a unique tag (see at least col. 6, lines 20-25, col. 3, lines 10-25, col. 1 1, lines 55-65, col. 7, lines 10-15). It would have been obvious to one having ordinary skill in the ad at the time of the invention to have used the commission and access via a distributor, to items assigned a unique tag as in Bezos in the system and method of Wong since the commission and access of Bezos would have promoted marketing of goods and exposure as taught by Bezos (col. 1 , lines 25-50, col. 3, lines 25-40). It also would have been obvious to have customized the store by a combination of all the options of claim 3 since these are well known in the store building art for further distinction of store sites. It also would have been obvious to have the product mix commensurate with a key word store since this is well known in the art for customer searching and which would have been adopted for the intended use of searching the mall of Wong. It also would have been obvious to have permitted the ordering of personalized items since this is well known in the ad and would have been adopted for the intended use of at least applications to clothing items (such as Land's End catalog which offers sewing of initials to items). It also would have been obvious to have a store owner own multiple stores each with a different URL since this would have been adopted for the intended use of running multiple specialty stores. It also would have been obvious to have the host not discernable by the customer since the customer interaction of Wong and Bezos is with

the store (buying from the store, not the mall in general). It also would have been obvious to have deselected undesired items since this would have been adopted at least for the intended use of generating specialty stores.

Response to Arguments

5. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). As stated above, suggestion is provided in at least Bezos.

6. Applicant argues that the combination does not teach a class designation for identifying product items available from a plurality of distributors such that the members of a same class are assigned a unique tag. The Examiner disagrees with Applicant because in Wong the particular store or establishment is assigned a store ID, which is available to the members of the particular store in which, the members can access particular group ID's. The different stores having their unique ID's in which their members can access certain items group's ID and not others.

Point of contact

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raquel Alvarez whose telephone number is (703)305-0456. The examiner can normally be reached on 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric w Stamber can be reached on (703)305-8469. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

For the upcoming move to the new Alexandria office, everyone has been assigned new phone and RightFax numbers. My new phone number will be : 571-272-6715, my supervisor's phone number will be: 571-272-6724.. This changes will not happen until April 2005 (or later) and therefore our current numbers are still in service until the move.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Raquel Alvarez
Primary Examiner
Art Unit 3622

R.A.
1/26/05